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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,360	09/25/2006	Misa Hanita	Q93023	9859
23373 7590 08/28/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER				
WOOD, ELLEN S				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
08/28/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/567,360

Applicant(s)

HANITA ET AL.

Examiner

ELLEN S. WOOD

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: A/E
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.
2. Applicant's arguments, filed 06/22/2009, with respect to claims 1 and 3-16 have been fully considered and are persuasive. The 35 U.S.C 102(a) rejection of claims 1 and 3-16 as being anticipated by JP 2004-182344 to Kitano has been withdrawn.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 3-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kikuchi et al. (JP 2002-241608, hereinafter "Kikuchi") in view of Takagi et al. (US 2003/0130405, hereinafter "Takagi").

Kikuchi discloses a container formed from an oxygen uptake nature resin composition [0001]. The resin combines a polyamide resin, an oxidizing organic component, and a transition metal system catalyst [0011]. The terminal amino group concentration is not more than 40 eq/10⁶g [0011]. The polyamide is derived from a xylylenediamine and a dicarboxylic acid component [0011]. The oxidizing organic components are a polymer derived from polyenes, especially an acid denaturation

polyene system polymer [0011]. The transition metal system catalyst is carboxylate of cobalt [0011]. The oxidizing organic component contains 0.01-10% of the weight of the resin composition [0011]. The transition metal system catalyst is contained in a quantity of 100-3000ppm [0011]. The resin sheet can be laminated to another layer to form a multilayer structure [0035].

Kikuchi is silent with regards to the resin composition as the island portion in an island-in-the-sea structure with an additional resin component as the sea portion.

Takagi discloses a thermoplastic resin composition that has an island-and-sea micro structure constituted by component A and component B [0010]. Components A are amorphous thermoplastic resins and components B are crystalline thermoplastic resins [0013]. Component A is the island phase and component B is the sea phase in the micro structure [0047]. The examiner would like to note that component A of Takagi represents component B of the claimed invention and component B of Takagi represents component A the claimed invention. Component A consists of amorphous polyamides [0015] where component B consists of thermoplastic resins such as PET [0037]. The size of the island phase is usually 0.1 to 10 μm in major diameter [0046]. The thermoplastic resin composition makes molded articles with excellent mechanical strength [0047]. Since the thermoplastic resin composition according to the present invention is provided with an island-and-sea micro structure by combining two different types of thermoplastic resin, the composition is improved in molding workability with no serious compromise in fluidity [0060].

It would be obvious to one of ordinary skill in the art to combine the island-and-sea micro structure of Takagi with the resin composition of Kikuchi, because the island-and-sea micro structure of Takagi enables a thermoplastic resin to have improved molding workability and excellent mechanical properties, thus producing a packing container, when Takagi and Kikuchi are combined, with excellent oxygen absorbing properties and processability.

Response to Arguments

5. Applicant's arguments with respect to claims 1 and 3-16 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELLEN S. WOOD whose telephone number is (571)270-3450. The examiner can normally be reached on M-F 730-5 with every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1794